

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 5TH NOVEMBER 2007 / 14TH KARTHIKA 1929

Crl.Rev.Pet.No. 3959 of 2007()

CRA.208/2005 of ADDL. SESSIONS COURT (ADHOC-2), THRISSUR
CC.209/2001 of JUDL. MAGISTRATE OF FIRST CLASS COURT,
KODUNGALLUR

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REVN. PETITIONER: PETITIONERS

1. SHAFEEQ, AGED 28 YEARS,
S/O.SAIDU MOHAMMED, VADAKKE ANGADI VEETIL
HOUSE, LAKSHAM COLONY, EDAVILANGU VILLAGE,
KODUNGALLUR TALUK.
2. NAZEER, AGED 40 YEARS,
S/O.MAKKAR, PALLIPURATH HOUSE,
LAKSHAM VEEDU COLONY, EDAVILANGU VILLAGE,
KODUNGALLUR TALUK.
3. MANAF, AGED 30 YEARS,
S/O.MOHAMMED, KARUPPAM VEETIL HOUSE,
EDAVILANGU VILLAGE, KODUNGALLUR TALUK.
4. SHUKKOOR, AGED 25 YEARS,
S/O.SAIDU MOHAMMED, VADAKKE ANGADI VEETIL
HOUSE, LAKSHAM COLONY, EDAVILANGU VILLAGE,
KODUNGALLUR TALUK.

BY ADV. SRI.BABU KARUKAPADATH

RESPONDENTS:

STATE OF KERALA REPRESENTED
BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

PUBLIC PROSECUTOR SRI. C.M. NAZAER
BY ADV. SRI.M.SHAJU PURUSHOTHAMAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 5-11-2007 , THE COURT ON 05/11/2007 PASSED THE
FOLLOWING:

V. RAMKUMAR, J.

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Crl. R.P. No. 3959 of 2007

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Dated: 05-11-2007

ORDER

The revision petitioners four in number stand concurrently convicted and sentenced for all or some of the offences punishable under Sections 326, 324 and 323 read with Sec. 34 I.P.C.

2. The case of the prosecution can be summarised as follows:

On 2-3-2000 at about 5 p.m. in the residence of P.W.1 (Muhammed) at Idavilangu the 4 accused persons in furtherance of their common intention to do so trespassed upon his house and voluntarily caused hurt to P.Ws 1 to 4 of whom P.W.2 Sainaba sustained a fracture. The accused have thereby committed the aforesaid offences. The weapon used was an iron rod wielded by A1.

3. The prosecution examined 9 witnesses as P.Ws 1 to 9 and got marked 7 documents as Exts.P1 to P7 and 1 iron rod as MO 1.

4. After the close of the prosecution evidence, the accused were questioned under Sec. 313 (1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against them in the evidence for the prosecution. They denied those circumstances and maintained

their innocence. The did not adduce any defence evidence when called upon to do so.

5. The learned Judl. First Class Magistrate - I, Kodungallur after trial, as per judgment dated 16-3-2005 convicted the accused of all the offences charged against them and sentenced them to rigorous imprisonment for one year under Sec. 452 I.P.C., for one year under Sec. 323 I.P.C. , for one year under Sec. 324 I.P.C. for three years under Sec. 326 I.P.C. and also to pay fine of Rs. 2,500/- and in default to pay the fine rigorous imprisonment for one year under Sec. 326 I.P.C. The substantive sentences were directed to be run concurrently. Eventhough the revision petitioners preferred an appeal as Crl. Appeal No. 208 of 2005 before the Addl. Sessions Judge, Thrissur, the learned Addl. Sessions Judge as per judgment dated 12-7-2007 confirmed the conviction of A1 for all the offences and A2 to A4 under Sections 323 and 452 I.P.C. but acquitted accused Nos. 2 to 4 of the offences punishable under Sections 324 and 326 I.P.C. A sentence of simple imprisonment for one year for each of the said offences was passed . It is the said judgment which is assailed in this revision.

6. PWs 1 to 4 are the persons injured in the occurrence. Pending this revision the revision petitioners/accused have settled the

matter with PWs 1 to 4 (the injured) and have filed a joint petition Crl.M.A. 11635 of 2007 seeking permission to compound the offences. In as much as the offences punishable under Sections 452 and 326 I.P.C. are not compoundable offences, there cannot be composition of those offences. Hence, A2 to A4 are permitted to compound only the offences punishable under Sections 323 and 324 I.P.C. and A1 is permitted to compound the offence punishable under Sec. 325 I.P.C. and this will have the effect of acquittal of the revision petitioners of the offences punishable under Sections 323 and 324 I.P.C. in view of Section 320 (8) Cr.P.C. With regard to the conviction under Sections 326 and 452 I.P.C., the findings recorded by the courts below concurrently do not justify any interference by this Court sitting in revision. The conviction of the revision petitioners 2 to 4 under Sections 326 and 452 I.P.C. is therefore confirmed. Taking note of the fact that the parties who are related to each other have settled the matter, the sentence imposed on the revision petitioners under Sec. 452 and 326 is altered as follows:

“For the conviction under Section 452 I.P.C. all the revision petitioners shall undergo imprisonment till the rising of the court and to pay a sum of Rs. 1,000/- as fine and on default to pay the fine, the defaulting accused shall suffer

simple imprisonment for one month. For his conviction under Sec. 326 I.P.C. A1 shall suffer imprisonment till rising of the court and shall also pay a fine of Rs. 2000/-. On default to pay the fine, he shall suffer simple imprisonment for two months. The fine amount shall be deposited before the trial court within a period of one month from today”.

In the result, this revision is disposed of confirming the conviction of A1 to A4 of the offence punishable under Sec. 452 and confirming the conviction of A1 for the offence punishable under Sec. 326 I.P.C. but altering the sentence as above.

V. RAMKUMAR, JUDGE.

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